UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AZAM AHMED,

                              Plaintiff,

            -against-

CIGNA HEALTH MANAGEMENT, INC. et al.,

                              Defendants.

23-CV-8094 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

All parties agree that the Certificate of Coverage attached to the complaint is the authentic insurance contract between Ahmed and Wellfleet and contains a term limiting the time to sue. That term states the following:

> No action at law or in equity may be maintained against Us prior to the expiration of 60 days after written submission of a claim has been furnished to Us as required in this Certificate. You must start any lawsuit against Us under this Certificate within three (3) years from the date the claim was required to be filed.

The contract defines "Us" as:

> Atlanta International Insurance Company and anyone to whom We legally delegate performance, on Our behalf, under this Certificate.

The complaint alleges that Cigna was acting as "a subcontractor of the policy administrator." Dkt. 43 at 1.
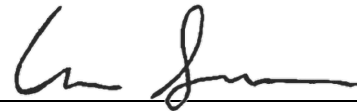
By Thursday, June 20, 2024, at 5:00 PM, Plaintiff and Cigna should submit letters, not to exceed three single-spaced pages, discussing whether this contractual provision means that a three-year term also applies to Plaintiff's unjust-enrichment claim against Cigna.

In addition, the parties should address:

- Whether the unjust-enrichment claim is subject to a three-year term because it is "based on the same allegations" as the breach-of-contract claim. *Herba v. Chichester*, 754 N.Y.S.2d 695, 697 (3d Dep't 2003).

- Whether Plaintiff can seek disgorgement on an unjust-enrichment claim. *See, e.g.*, *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Rudell & Assocs., Inc.*, 189 N.Y.S.3d 68, 70 (1st Dep't 2023) ("Plaintiffs are not entitled to disgorgement of [defendants'] profits based on their unjust enrichment claim, as these damages would compensate plaintiffs beyond their losses.").

SO ORDERED.

Dated:  June 17, 2024
        New York, New York

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ARUN SUBRAMANIAN
United States District Judge